

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Magistrate Jan M. Adler]

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
Mario Raymond Fernandez (1),)
Ernesto Flores-Blanco (2),)
)
Defendants.)
_____)

Case No. 07CR3405-W
07MJ8976

MATERIAL WITNESS
DEPOSITION ORDER

Upon motion of material witness Alejandro Portillo-Mendoza, by and through his counsel THOMAS G. GILMORE pursuant to Rule 30(b)(4), Federal Rules of Civil Procedure, for an order directing the taking of the oral deposition of Alejandro Portillo-Mendoza, a material witness, by means of videotape; and good cause for the issuance of the order having been shown; therefore,

IT IS HEREBY ORDERED that the deposition of Alejandro Portillo-Mendoza be taken by means of videotape recordings, subject to the following conditions:

1. Said material witness shall be deposed on May 16, 2008, at 10 a.m. The deposition will be held at the U.S.

1 Attorney's office, located at 880 Front Street, San Diego,
2 California.

3 2. All parties, meaning the United States and the
4 defendants, shall attend the deposition. The arresting agency shall
5 bring the material witness to the deposition and remain present
6 during the proceeding. If the defendant is in custody, he shall be
7 brought separately to the deposition and a marshal shall remain
8 present during the entire proceeding.

9 3. The United States Attorney's Office shall provide a
10 videotape operator and arrange for a court-certified interpreter to
11 be present for the material witness, if necessary.

12 The cost of the interpreter for the material witness will be
13 borne by the United States Attorney's office.

14 4. If the defendant needs an interpreter independent of the
15 material witness interpreter (if any), defense counsel will arrange
16 for a court-certified interpreter to be present. The costs of a
17 separate interpreter for the defendant shall be paid by the court.

18 5. The United States Attorney's Office shall arrange for a
19 certified court reporter to be present. The court reporter shall
20 stenographically record the testimony and serve as a notary and
21 preside at the deposition in accordance with Rule 28(a), Fed. R.
22 Civ. P. The cost of the court reporter shall be borne by the
23 United States Attorney's Office.

24 6. The deposition shall be videotape recorded, meaning a
25 magnetic tape that records sound as well as visual images. At the
26 conclusion of the deposition on the record, the witnesses, or any
27 party, may elect to have the witness review the videotaped record
28 of the deposition to check for errors or omissions and to note any

1 changes. Any errors, omissions or changes, and the reasons for
2 making them, shall be stated in writing, signed the by the
3 witness(es) and delivered to the notary in a sealed envelope and
4 filed in the same fashion as described in Paragraph 17 below,
5 unless the parties agree on the record to a different procedure.

6 7. The videotape operator shall select and supply all
7 equipment required to videotape and audiotape the deposition and
8 shall determine all matters of staging and technique, such as
9 number and placement of cameras and microphones, lighting, camera
10 angle, and background. The operator shall determine these matters
11 in a manner that accurately reproduces the appearance of the
12 witness and assures clear reproduction of both the witness'
13 testimony and the statements of counsel. The witness, or any party
14 to the action, may place upon the record any objection to the
15 videotape operator's handling of any of these matters. Such
16 objections shall be considered by the Court in ruling on the
17 admissibility of the video and/or audiotape record. All such
18 objections shall be deemed waived unless made promptly after the
19 objector knows, or has reasonable grounds to know, of the basis of
20 such objection.

21 8. The deposition shall be recorded in a fair, impartial,
22 objective manner. The videotape equipment shall be focused on the
23 witness; however, the videotape operator may from time to time
24 focus upon charts, photographs, exhibits or like material being
25 shown to the witness during the deposition.

26 9. Before examination of the witness, the Assistant United
27 States Attorney shall state on the video/audio record his/her name;
28 the date, time and place of the deposition; the name of the

1 witness(es) and the identity of the parties and the names of all
2 persons present in the deposition room. The notary shall then
3 swear the witness on the video record. Further, before the
4 beginning of the examination each counsel shall identify
5 himself/herself and his/her respective client on the record. If
6 more than one videotape is used, the notary shall repeat items (a),
7 (b) and ©) at the beginning of each new tape.

8 10. The videotape operator shall not stop the video recorder
9 after the deposition commences until it concludes, except, however,
10 that any party may request a cessation for a brief recess, which
11 request will be honored unless another party objects and states the
12 basis for said objection on the record. Each time the tape is
13 stopped or started, the operator shall announce the time on the
14 record. If the deposition requires the use of more than one tape,
15 the end of each tape and the beginning of the next shall be
16 announced orally on the video record by the operator.

17 11. Testimonial evidence objected to shall be recorded as if
18 the objection had been overruled and the court shall rule on the
19 objections at the appropriate time. The party raising the
20 objection(s) shall be responsible for having a transcript prepared
21 for the court to consider. All objections to the evidence
22 presented shall be deemed waived unless made during the deposition

23 12. The party offering the deposition into evidence at trial
24 shall provide the Court with a transcript of the portions so
25 offered.

26 13. Copies of all exhibits utilized during the videotaped
27 deposition shall be attached to the videotape record.

28 14. At the conclusion of the deposition, any objection,

1 including the basis, to release of the material witness(es) from
2 custody shall be stated on the record. If there is no objection,
3 the attorney for the material witness(es) shall immediately serve
4 all parties with a "Stipulation and Proposed Order for Release of
5 the Material Witness(es)" and submit the Order to the Clerk of
6 Court for the Judge's signature. Prior to release from custody
7 the attorney for the Government shall serve the material
8 witness(es) with a subpoena for the trial date and a travel fund
9 advance letter.

10 15. Upon request by either party, the videotape operator
11 shall provide a copy of the videotaped deposition to the requesting
12 party at the requesting party's expense. After preparing the
13 requested copies, if any, the videotape operator shall deliver the
14 original videotape to the notary along with a certificate signed by
15 the videotape operator attesting that the videotape is an accurate
16 and complete record of the recorded deposition.

17 16. The notary shall file the original videotape, along with
18 any exhibits offered during the deposition, with the Court in a
19 sealed envelope marked with the caption of the case, the name of
20 the witness and the date of the deposition. To that envelope, the
21 videotape operator shall attach a sworn statement that the notary
22 shall attach the sworn statement that the videotape is an accurate
23 and complete record of the recorded deposition and a certification
24 that the witness was duly sworn by the officer.

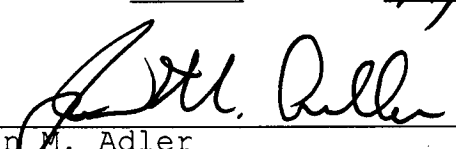
25 17. Unless waived by the parties, the notary must give prompt
26 notice to all parties of the filing of the video record of the
27 deposition with the Court pursuant to Fed.R.Civ.P. 30(f)(3).

28 18. If any party objects on the record to the release of the

1 material witness(es) from custody, the objecting party must request
2 in writing a hearing on the issue before the federal judge who is
3 assigned the case or to such other district judge or magistrate
4 judge as they designate. Notice of the Request for Hearing must be
5 served on all parties and filed with the Clerk of Court within
6 twenty-four (24) hours after the completion of the deposition, with
7 a courtesy copy to chambers. The Court will set a briefing
8 schedule, if appropriate, and a date and time for the objection to
9 be heard as soon as reasonably practicable. At the hearing, the
10 objecting party must establish to the Court's satisfaction an
11 appropriate legal basis for the material witness(es) to remain in
12 custody. If, after the hearing, the Court orders the release of
13 the material witness(es), the material witness(es)' attorney shall
14 immediately present the release order to the Court for signature and
15 filing. Before release of the material witness(es) from custody,
16 the Government shall serve the material witness(es) with a subpoena
17 for the trial date and a travel fund advance letter.

18 IT IS SO ORDERED.

19 DONE at San Diego, California this 22nd day of April,
20 2008.

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22 Jan M. Adler
23 UNITED STATES MAGISTRATE JUDGE
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